

FEB 09 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re Patent Application of HALL et al.  
Application Serial No. 09/172,577  
Application Filing Date 10/13/98  
For INERT GAS BLANKET FOR PROTECTION FROM OXIDATION

Appeal No. 2005-1648

Request for Reconsideration

Commissioner for Patents, Alexandria, VA 22313-1450:

I certify that this correspondence is facsimile-transmitted  
to the Patent and Trademark Office (571 273 8300) on 09 FEB 2006:

Christopher John Rudy: Christopher John Rudy 09 FEB 2006.

Thank you for the DECISION ON APPEAL mailed DEC 22 2005. In  
reply, please reconsider part whereof.

Reconsideration Argument with Respect to Claim 16

Claim 16 distinguishes over Kopel, U.S. patent No. 4,561,393  
under 35 USC 102(b).

As any person skilled in the art knows, the system of Kopel  
is sealed. In other words, gas inside the system is not able to  
come into contact with gas external the system. Even though it  
is shunted back and forth between two compartments of the lifter,  
the very same Nitrogen gas composition is involved, and it stays  
inside the same system; the only difference is internal pressure.

In contrast, claim 16 requires a method for controlling  
oxidative degradation ... in a ... vented space.

The word, "vent," is an ancient word that comes as an  
alteration from the French, "vent," with roots in the Latin,  
"ventus," both meaning wind. Thus, implied by definition in a  
vented space is entry of wind, from external the system. It is  
in view of such a condition, by which oxygen can enter into the  
generally enclosed space, that the inert gas blanket is provided.  
Note that the claim refers to control of oxidative degradation.

Oxidative degradation is not possible in the sealed system of  
Kopel because no oxygen can enter from outside a sealed system.

On the other hand, oxidative degradation is addressed by the  
claimed invention in a vented system because oxygen may enter in  
from outside the system. Thus, the inert gas blanket is provided  
inside the generally enclosed, vented space.

As noted in the Brief on pages 6 et seq., this can be  
appreciated by comparing, again, present FIG. 1, which depicts a  
common, i.e., standard, internal combustion engine in a motor

FEB 09 2006

HALL et al., 09/172577  
Appeal No. 2005-1648Request for Reconsideration  
Page 2

vehicle, modified with the invention, in which the features connected to and above the valve cover, at least one of which would be recognized as being a vent for the crankcase, again, so that blow-by gasses can enter the combustion train. Also, attached to the Brief was a flier sheet from Murray's Discount Auto Stores: FUEL WATCH. Again, note, the information in the right hand column, second item from from the top: PCV and Breather Filter. This corroborates that the known internal combustion engines, especially those for motor vehicles as depicted in present FIG. 1, are vented. Note the flier's acknowledgement of the "breather" and "PCV valve." Again, in fact, were it true that crankcases were not vented, the seals of internal combustion engines would continually blow, with the result that the engines would be inoperable. The Board agrees that a vented engine is a fine example of a working machine. For another example, it is well known that transmissions are vented. Once again, the Board agrees that any person skilled in the art would recognize this and, from the drawings and written description, be able to make expression of the recitation at issue, "vented space in a working machine." Thus, the present and original specification, as pointed out above, discloses, in particular, examples of standard machinery such as a crankcase of an internal combustion engine as depicted in FIG. 1 and described on page 8 and so forth, which are vented. Moreover, as also pointed out in the Brief, the disclosure of "overpressure" does indeed infer a vent. An overpressure situation, as known in the art, refers to a situation in which a body of a gas inside the system, in limited contact with a body of a gas outside the system, has a greater pressure than the outside body. The limited contact is provided by a vent. Notice, again, for example, pressurized domed stadiums, which are vented and employ the known overpressure principle.

Thus, claim 16 requires a truly vented, not a sealed, system. The relief check valve of Kopel inside a closed system is not "vented" as understood by a person of ordinary skill in the art.

And so, the "vented" limitation excludes, or is otherwise inconsistent with, the overall sealed nature of Kopel's valve lifter.

Therefore, claim 16 is not anticipated under Section 102(b).

Request for Explicit Statement How Claim 16 May Be Amended,  
as to Overcome the Rejection under 35 USC 102(b) over Kopel

If the Board does not agree with the foregoing, it is noted that the DECISION stated on page 10, lines 1-4:

"Claim 16 does not contain any limitation which excludes, or is otherwise inconsistent with, the overall sealed nature of Kopel's valve lifter."

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HALL et al., 09/172577  
Appeal No. 2005-1648

Request for Reconsideration  
Page 3

The Appellants are unsure if that statement authorizes amendment of the claim to overcome the rejection on remand to the Examiner.

Please, therefore, more expressly indicate that indeed that statement authorizes an amendment under 37 CFR 41.50(c). As an alternative, additional language from the Board along such lines to authorize an amendment under 37 CFR 41.50(c) is requested.

Other Matters

If it is deemed necessary, the members of the Board may wish to address in detail the Examiner's rejection of claims 20 and 51-53 under 35 USC 112, first paragraph, with respect to the recitation, "without the presence of said inert gas blanket ...". It is submitted that that rejection is untenable, and argument in support of Appellants' position can be found in their Brief from the paragraph bridging pages 8 and 9 through page 10, line 23.

Conclusion


Prompt and favorable action is solicited.

Respectfully,

RICHARD H. HALL ET AL.

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